In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1547

MICHAEL CATALANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of having unlawfully conspired with Aniello Dellacroce and Martin Goldman to attempt to evade Dellacroce's 1968 federal income tax, in violation of 18 U.S.C. 371. Petitioner was sentenced to two years' imprisonment. The court of appeals affirmed.[1] Petitioner contends that the government

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[1]The opinion of the court of appeals is set forth in the appendix to the petition for a writ of certiorari in No. 73-1420, *Dellacroce* v. *United States*, and is reported at 491 F. 2d 268. The judgment of the court of appeals was entered on January 21, 1974; the petition in the instant case was not filed until April 13, 1974, and therefore is substantially out of time under Rule 22 (2) of the Rules of this Court.

failed to disclose at trial that a prosecution witness, William Stone, "had been promised payment for his testimony" (Pet. 6).[2]

Petitioner's contention was the subject of a four-day post-trial hearing on a motion for new trial. At the conclusion of that hearing the trial court determined that there was "not one iota" of evidence that Stone had been promised payment for his testimony (H. 563-565).[3] This determination was upheld by the court of appeals as supported by the evidence (491 F. 2d at 276), and it warrants no further review. See *United States* v. *Johnson*, 327 U.S. 106. There is, therefore, no factual basis for petitioner's contention.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1974.

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[2]Petitioner also incorporates by reference all contentions made by petitioner Dellacroce in No. 73-1420. Those contentions, some of which petitoner here lacks standing to raise, are answered in our opposition to Dellacroce's petition, a copy of which we are sending to petitioner's counsel.

[3]"H." refers to the transcript of the post-trial hearing.